

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 17.11.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.10041 of 2003

Bharath Nagar Welfare Association,
No.43, Palaru Street,
Bharath Nagar,
Adambakkam, Chennai-88.
Rep. By its Secretary
V.P.Sridhar

... Petitioner

Vs.

- 1.The Commissioner,
Alandur Municipality,
Alandur, Chennai.
- 2.S.Gopal,
4, Thamiraparani Street,
Bharath Nagar,
Adambakkam, Chennai-88.
- 3.Parthasarathy,
6, Thamiraparani Street,
Bharath Nagar,
Adambakkam, Chennai-88.

सत्यमेव जयते... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Mandamus to direct the first respondent to remove the encroachment in the 30 feet public road and the public land demarcated for public purpose in Ward 'F' Block 12, T.S.No.29, 30 and 31 in Vaigai Street, Bharath Nagar, Adambakkam Village, Tambaram Taluk encroached upon by respondents 2 and 3 as per provisions of the Tamil Nadu District Municipality Act, 1920.

For Petitioner : Mr.V.A.Shanthanam
For 1st respondent : Mr.P.Srinivas
For 2nd Respondent : Mr.L.Chandrakumar
For 3rd Respondent : Ms.S.Sujatha

ORDER

(Order of the Court was delivered by P.SATHASIVAM, J.)

Bharath Nagar Welfare Association has approached this Court to issue a writ of Mandamus directing the first respondent-Commissioner, Alandur Municipality, Chennai, to remove the encroachment in the 30 feet public road and the public land demarcated for public purpose in Ward 'F' Block 12, T.S.No.29, 30 and 31 in Vaigai Street, Bharath Nagar, Adambakkam Village, Tambaram Taluk encroached upon by respondents 2 and 3 as per provisions of the Tamil Nadu District Municipality Act, 1920.

2. Heard the learned counsel for the petitioner as well as the respondents.

3. Pursuant to the Rule Nisi issued, the first respondent-the Commissioner, Alandur Municipality, Chennai, has filed a counter affidavit. Inasmuch as the grievance expressed by the petitioner-Association as seen from various paragraphs in the affidavit filed in support of the writ petition have been met by the the first respondent-Commissioner, Alandur Municipality, Chennai, in his counter affidavit dated 15.11.2006, we are of the view that it is unnecessary to traverse all the factual details as stated by the parties. However, the following information in the counter affidavit of the first respondent are relevant:

6. It is submitted that the authors of the layout seem to have shown part of the adjacent lands that are not owned by them as street and open space areas by making dotted lines over the same. It is evident from the survey extracts and the lay out approval maps that the lands in survey No.246/3 do not come within the approved layout called Bharath nagar. It is submitted that the petitioner association has approached the various authorities on the misconceived notion that the lands shown in dotted lines in the lay out approval are part of the lay out and that the respondents 2 and 3 have encroached upon the street and the open space reservation. Survey No.246/3 is admittedly not part of the lay out area that was developed by the promoters of the Bharath Nagar Layout even as per the lay out approval plan and the heading in the same.

8. The petitioner has approached this Honourable Court based upon some allegations that are misconceived and amount to saying that the lands that did not belong to the original owner who had authored the lay out were part of the lay out and had been marked as Street and Open space reservation. It is submitted that the survey

authorities seem to have issued the survey extracts based upon improper designation with regard to part of survey No.246/3 including it in the lay out area and have wrongly shown it as part of the street and the open area which had been given T.S.Nos.29 and 30 respectively. This action would have been only due to the inclusion of the said portions in the lay out plans in dotted lines.

13. The said structures stand only in Survey No.246/3 and do not in any way protrude into the lands in Survey Nos.246/1, 4, 6, 7, 8, 9 that form part of the Bharath Nagar Layout. Therefore the respondent herein cannot take any action as prayed for by the petitioner by treating the said structures to be encroachments."

4. Apart from the above information, the second respondent has also filed a counter affidavit disputing the claim made by the petitioner-Association.

5. In addition to these factual information in the form of an affidavit, the learned counsel appearing for the first respondent-Municipality has pointed out that the planning permission-approved lay out No.165/74 has been issued, which is available at page 21 of the typed set of papers filed by the petitioner as well as Town survey register Nos.29, 30, 31 in Block-12, Ward-"F", which is available at page 23 of the same typed set of papers. On going through the approved lay out No.165/74 and the details available in the Town Survey Register as well as the particulars mentioned therein such as, old Survey number, present survey number and the details regarding the ownership, we are unable to accept the case as stated by the petitioner. Further, on verification of the information furnished by the first respondent as referred to above and the public documents as discussed, we find no merit in the claim made by the petitioner-Association. Consequently, the writ petition fails and the same is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

raa

To

The Commissioner,
Alandur Municipality,
Alandur, Chennai.

+1cc to Mr.P.Srinivas, Advocate Sr 55772
+1cc to Mr.R.Ram Ganeshan, Advocate Sr 55853
+1cc to Mr.L.Chandrakumar, Advocate Sr 55889

VC (CO)
km/30.11.

W.P.No.10041 of 2003



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